

Securities and Exchange Commission

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acting pursuant to delegated authority, may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors.

(c) *Payment of fees.* Fees required with respect to a filing that is submitted electronically shall be paid in accordance with the procedures set forth in Instructions for Filing Fees—Rule 3a of the Commission's Informal and Other Procedures (§202.3a of this chapter).

NOTE: All filing fees paid by electronic filers must be submitted to the lockbox depository, as provided in Rule 3a, including those pertaining to documents filed in paper pursuant to a hardship exemption.

(d) Where the Commission's rules, schedules and forms provide that a document must be filed on the same day it is published, furnished, sent or given to security holders or others, an electronic filer may file the document with the Commission electronically before or on the date the document is published, furnished, sent or given, or if such publication or distribution does not occur during the official business hours of the Commission, as soon as practicable on the next business day. Any associated time periods shall be calculated on the basis of the publication or distribution date (as applicable), and not on the basis of the date of filing.

[58 FR 14670, Mar. 18, 1993, as amended at 59 FR 67761, Dec. 30, 1994; 60 FR 26618, May 17, 1995; 62 FR 47938, Sept. 12, 1997; 64 FR 61451, Nov. 10, 1999]

§ 232.14 Paper filings not accepted without exemption.

The Commission will not accept in paper format any filing required to be submitted electronically under Rules 100 and 101 of Regulation S-T (§§ 232.100 and 232.101 respectively), unless the filing satisfies the requirements for a temporary or continuing hardship exemption under Rule 201 or 202 of Regulation S-T (§§ 232.201 or 232.202 respectively).

[62 FR 58649, Oct. 30, 1997]

ELECTRONIC FILING REQUIREMENTS

§ 232.100 Persons and entities subject to mandated electronic filing.

The following persons or entities shall be subject to the electronic filing requirements of this part 232:

(a) Registrants whose filings are subject to review by the Division of Corporation Finance, except for foreign private issuers and foreign governments;

(b) Registrants whose filings are subject to review by the Division of Investment Management; and

(c) Any party (including natural persons, foreign private issuers and foreign governments) that files a document jointly with, or as a third party filer with respect to, a registrant that is subject to mandated electronic filing requirements.

[62 FR 36456, July 8, 1997]

§ 232.101 Mandated electronic submissions and exceptions.

(a) *Mandated electronic submissions.* (1) The following filings, including any related correspondence and supplemental information, except as otherwise provided, shall be submitted in electronic format:

(i) Registration statements and prospectuses filed pursuant to the Securities Act (15 U.S.C. 77a, *et seq.*) or registration statements filed pursuant to Sections 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78l(b) or (g));

(ii) Statements and applications filed with the Commission pursuant to the Trust Indenture Act (15 U.S.C. 77aaa *et seq.*), other than applications for exemptive relief filed pursuant to section 304 (15 U.S.C. 77ddd) and section 310 (15 U.S.C. 77jjj) of that Act;

(iii) Statements, reports and schedules filed with the Commission pursuant to section 13, 14, or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n, and 78o(d)), and proxy materials required to be furnished for the information of the Commission in connection with annual reports on Form 10-K (§249.310 of this chapter) or Form 10-KSB (§249.310b of this chapter) filed pursuant to section 15(d) of the Exchange Act;

NOTE TO PARAGRAPH (A)(1)(III). Electronic filers filing Schedules 13D and 13G with respect to foreign private issuers should include in the submission header all zeroes (*i.e.*, 00-0000000) for the IRS tax identification number because the EDGAR system requires an IRS number tag to be inserted for the subject company as a prerequisite to acceptance of the filing.

(iv) Documents filed with the Commission pursuant to sections 8, 17, 20, 23(c), 24(e), 24(f), and 30 of the Investment Company Act (15 U.S.C. 80a-8, 80a-17, 80a-20, 80a-23(c), 80a-24(e), 80a-24(f) and 80a-29); *provided, however*, that submissions under section 6(c) or 17(g) of that Act (15 U.S.C. 80a-6(c) or 80a-17(g)), or documents related to applications for exemptive relief under any section of that Act, shall not be made in electronic format; and

(v) Documents filed with the Commission pursuant to the Public Utility Act (15 U.S.C. 79a *et seq.*).

(2) The following amendments to filings, including any related correspondence and supplemental information except as otherwise provided, shall be submitted as follows:

(i) Any amendment to a filing by or relating to a registrant required to file electronically, including any amendment to a paper filing, shall be submitted in electronic format;

(ii) The first electronic amendment to a paper format Schedule 13D (§240.13d-101 of this chapter) or Schedule 13G (§240.13d-102 of this chapter), shall restate the entire text of the Schedule 13D or 13G, but previously filed paper exhibits to such Schedules are not required to be restated electronically. *See* Rule 102 (§232.102) regarding amendments to exhibits previously filed in paper format. Notwithstanding the foregoing, if the sole purpose of filing the first electronic Schedule 13D or 13G amendment is to report a change in beneficial ownership that would terminate the filer's obligation to report, the amendment need not include a restatement of the entire text of the Schedule being amended.

(3) Supplemental information shall be submitted in electronic format except as provided in paragraph (c)(2) of this section. The information shall be stored in the non-public EDGAR data storage area as correspondence. Supplemental information that is sub-

mitted in electronic format shall not be returned.

NOTE: Failure to submit a required electronic filing pursuant to this paragraph (a), as well as any required confirming electronic copy of a paper filing made in reliance on a hardship exemption, as provided in Rules 201 and 202 of Regulation S-T (§§232.201 and 232.202), will result in ineligibility to use Forms S-2, S-3, S-8, F-2 and F-3 (see §§239.12, 239.13, 239.16b, 239.32 and 239.33 of this chapter, respectively), restrict incorporation by reference of the document submitted in paper (see Rule 303 of Regulation S-T (§232.303)), or toll certain time periods associated with tender offers (see Rule 13e-4(f)(12) (§240.13e-4(f)(12) of this chapter) and Rule 14e-1(e) (§240.14e-1(e) of this chapter)).

(b) *Permitted electronic submissions.* The following documents may be submitted to the Commission in electronic format, at the option of the electronic filer:

(1) Annual reports to security holders furnished for the information of the Commission pursuant to Rule 14a-3(c) (§240.14a-3(c) of this chapter) or Rule 14c-3(b) (§240.14c-3(b) of this chapter), or pursuant to the requirements of Form 10-K or Form 10-KSB filed by registrants pursuant to Section 15(d) of the Exchange Act.

(2) Notices of exempt solicitation furnished for the information of the Commission pursuant to Rule 14a-6(g) (§240.14a-6(g) of this chapter) and notices of exempt preliminary roll-up communications furnished for the information of the Commission pursuant to Rule 14a-6(n) (§240.14a-6(n) of this chapter);

(3) Form 11-K (§249.311 of this chapter). Registrants who satisfy their Form 11-K filing obligations by filing amendments to Forms 10-K or 10-KSB, as provided by Rule 15d-21 (§240.15d-21 of this chapter), also may choose to file such amendments in paper or electronic format;

(4) Forms 3, 4 and 5 (§§249.103, 249.104 and 249.105 of this chapter);

(5) Form 144 (§239.144 of this chapter), where the issuer of the securities is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d), respectively);

(6) Periodic reports and reports with respect to issuances of primary obligations filed by the International Bank

for Reconstruction and Development pursuant to Section 15(a) of the Bretton Woods Agreements Act [22 U.S.C. 286k-1(a)] and part 285 of Title 17 of the Code of Federal Regulations;

(c) *Documents to be submitted in paper only.* The following shall not be submitted in electronic format:

(1)(i) Confidential treatment requests and the information with respect to which confidential treatment is requested;

(ii) Preliminary proxy materials and information statements with respect to a matter specified in Item 14 of Schedule 14A (§ 240.14a-101 of this chapter) for which confidential treatment has been requested in the manner prescribed by Rule 14a-6(e)(2) (§ 240.14a-6(e)(2) of this chapter) or Rule 14c-5(d)(2) (§ 240.14c-5(d)(2) of this chapter);

(2) Supplemental information, if the submitter requests that the information be protected from public disclosure under the Freedom of Information Act (5 U.S.C. 552) pursuant to a request for confidential treatment under Rule 83 (§ 200.83 of this chapter) or if the submitter requests that the information be returned after staff review and the information is of the type typically returned by the staff pursuant to Rule 418(b) of Regulation C (§ 230.418(b) of this chapter) or Rule 12b-4 of Regulation 12B (§ 240.12b-4 of this chapter);

(3) Shareholder proposals and all related correspondence submitted pursuant to Rule 14a-8 of the Exchange Act (§ 240.14a-8 of this chapter);

(4) No-action and interpretive letter requests (§ 200.81 of this chapter and 15 U.S.C. 78l(h));

(5) Applications for exemptive relief filed pursuant to Sections 304 and 310 of the Trust Indenture Act.

(6) Filings relating to offerings exempt from registration under the Securities Act, including filings made pursuant to Regulation A (§§ 230.251-230.263 of this chapter), Regulation D (§§ 230.501-230.506 of this chapter) and Regulation E (§§ 230.601-230.610a of this chapter), as well as filings on Form 144 (§ 239.144 of this chapter) where the issuer of the securities is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d), respectively).

(7) Promotional and Sales Material submitted pursuant to Securities Act Industry Guide 5 (§ 229.801(e) of this chapter) or otherwise supplementally furnished for review by the staff of the Division of Corporation Finance; and sales literature submitted under Rule 24b-2 of the Investment Company Act (§ 270.24b-2 of this chapter);

(8) Documents and symbols in a foreign language (see Rule 306 of Regulation S-T (§ 232.306));

(9) Exchange Act filings submitted to the Division of Market Regulation;

(10) Documents relating to investigations and litigation submitted pursuant to the Subpart D of Part 201 of this chapter;

(11) Submissions under Sections 6(c), 17(g), and 33 of the Investment Company Act (15 U.S.C. 80a-6(c), 80a-17(g), and 80a-32) and documents related to applications for exemptive relief under any section of the Act;

(12) Annual Reports to Security Holders furnished by Public Utility Holding Companies under Exhibit A to Form U5S (§ 259.5s of this chapter) or under rule 29 (§ 250.29 of this chapter);

(13) Reports to State Commissions, if furnished by Public Utility Holding Companies under Exhibit E to Form U5S (§ 259.5s of this chapter);

(14) Maps furnished by Public Utility Holding Companies under Exhibits E to Forms U5B and U-1 (§§ 259.5b and 259.101 of this chapter).

(15) Form F-6 (§ 239.36 of this chapter);

(16) Annual reports filed with the Commission by indenture trustees pursuant to Section 313 of the Trust Indenture Act (15 U.S.C. 77mmm);

(17) Applications for an exemption from Exchange Act reporting obligations filed pursuant to Section 12(h) of the Exchange Act (15 U.S.C. 78l(h)); and

(d) *Paper Copies of Electronic Filings.* Electronic filers, including third party filers, shall submit to the Commission a paper copy of their first electronic filing, as follows:

(1) The paper copy shall be either a document that meets the requirements of the applicable Commission rules and regulations for paper filings or a paper printout of the electronic filing. If the copy being submitted is the paper printout of the electronic filing, the

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header information specified in the EDGAR Filer Manual shall be omitted or blanked out to ensure that confidential information contained in the header remains non-public.

(2) The paper copy shall be sent to the following address: OFIS Filer Support, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312-2413. The paper copy shall be received by the Commission no later than six business days after the electronic filing. The following legend shall be typed, printed or stamped in capital letters at the top of the cover page of the paper copy:

THIS PAPER DOCUMENT IS BEING SUBMITTED PURSUANT TO RULE 101(d) OF REGULATION S-T.

(3) Signatures are not required for paper format documents submitted pursuant to this paragraph (d).

[58 FR 14670, Mar. 18, 1993; 58 FR 26383, May 3, 1993, as amended at 59 FR 67761, Dec. 30, 1994; 60 FR 32824, June 23, 1995; 60 FR 57684, Nov. 17, 1995; 61 FR 67202, Dec. 20, 1996; 62 FR 36456, July 8, 1997; 62 FR 39763, July 24, 1997; 64 FR 2849, Jan. 19, 1999; 64 FR 19471, Apr. 21, 1999; 64 FR 27894, May 21, 1999]

§ 232.102 Exhibits.

(a) Exhibits to an electronic filing that have not previously been filed with the Commission shall be filed in electronic format, absent a hardship exemption. Previously filed exhibits, whether in paper or electronic format, may be incorporated by reference into an electronic filing to the extent permitted by § 228.10(f) and § 229.10(d) of this chapter, Rule 411 under the Securities Act (§ 230.411 of this chapter), Rule 12b-23 or 12b-32 under the Exchange Act (§ 240.12b-23 or § 240.12b-32 of this chapter), Rule 22 under the Public Utility Holding Company Act (§ 250.22 of this chapter), Rules 0-4, 8b-23, and 8b-32 under the Investment Company Act (§ 270.0-4, § 270.8b-23 and § 270.8b-32 of this chapter) and Rule 303 of Regulation S-T (§ 232.303). An electronic filer may, at its option, restate in electronic format an exhibit incorporated by reference that originally was filed in paper format.

NOTE TO PARAGRAPH A: Exhibits to a Commission schedule filed pursuant to Section 13 or 14(d) of the Exchange Act may be filed in paper under cover of Form SE where such ex-

hibits previously were filed in paper (prior to a registrant's becoming subject to mandated electronic filing or pursuant to a hardship exemption) and are required to be refiled pursuant to the schedule's general instructions. *See* Rule 311(b) of Regulation S-T (17 CFR 232.311(b)).

(b) Amendments to all exhibits shall be filed in electronic format, absent a hardship exemption.

(c) Notwithstanding any other provision of this section, an electronic filer shall, upon amendment, restate in electronic format its articles of incorporation, by-laws or investment advisory agreement (in the case of a registered investment company or a business development company).

(d) Each electronic filing requiring exhibits shall contain an exhibit index, which should immediately precede the exhibits filed with the document. The index shall list each exhibit filed. Whenever an exhibit is filed in paper pursuant to a temporary or continuing hardship exemption, the letter "P" shall be placed next to the listed exhibit in the exhibit index to reflect that the exhibit was filed in paper pursuant to such exemption. Whenever an electronic confirming copy of an exhibit is filed pursuant to a hardship exemption (§ 232.201 or § 232.202(d)), the exhibit index should specify where the confirming electronic copy can be located; in addition, the designation "CE" (confirming electronic) should be placed next to the listed exhibit in the exhibit index.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, any incorporation by reference by a registered investment company or a business development company must relate only to documents that have been filed in electronic format, unless the document has been filed in paper under a hardship exemption (§ 232.201 or § 232.202) and any required confirming copy has been submitted.

(f) Persons submitting filings electronically under the Public Utility Act shall not be subject to paragraph (c) of this section.

[58 FR 14670, Mar. 18, 1993, as amended at 59 FR 67762, Dec. 30, 1994; 60 FR 32824, June 23, 1995; 62 FR 36457, July 8, 1997; 64 FR 27894, May 21, 1999]